

**THE LABOR COMMISSION  
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, August 12, 2009 - 11:45 A.M.  
Room 319, Heber Wells Building  
160 East 300 South  
Salt Lake City, Utah**

**The following Advisory Council members were in attendance:**

Dawn Atkin, Esq.  
Thomas Bingham, President, Utah Manufacturers Association  
David Bird, Esq.  
Brian Kelm, Esq.  
Susan Kelly, Liberty Mutual  
Brad Tibbitts, Utah State Insurance Department  
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter  
Ray Pickup, Workers Compensation Fund

**The following Advisory Council members were excused:**

Edward Holmes, M.D., RMCOEH  
Reo Castleton, SL County Fire Department  
Ralph Astorga, President USWA Local 392  
Brandt Goble, Painters and Tapers Local 77  
James V. Olsen, President, Utah Food Industry Association  
Jeff Rowley, Risk Manager, Salt Lake County

**Legislative Liaison Present:**

Senator Karen Mayne  
Rep. Mike Morley

**Others Present:**

Sherrie Hayashi - Commissioner  
Alan Hennebold - Deputy Labor Commissioner  
Larry Bunkall, Industrial Accidents Division Director, Labor Commission  
Ron Dressler – Policy Manager, Labor Commission  
Robyn Barkdull – Public Information Officer, Labor Commission  
David Lamb – Administration Director, Labor Commission  
Maggie Karpuk - NCCI  
Jacob Smith, Governor's Office of Planning and Budget  
Jan Moffitt – Workers Compensation Fund of Utah

**WELCOME**

**Welcome – Commissioner Hayashi**

**Commissioner Hayashi** brought the meeting to order at 11:55p.m. She asked Council members to be aware that future meetings will start at 11:45, as noted on the agenda notice.

**1. Miscellaneous Business - Commissioner Hayashi**

A. A motion to approve the minutes of the June 10, 2009 meeting was tabled because a quorum was not present. It was requested that in the future a PDF format of the minutes be sent as some members could not open the Word document currently sent out.

B. **Commissioner Hayashi** announced that the 2009 Actuarial Reports for the Employers Reinsurance Fund (ERF) and the Uninsured Employers Fund (UEF) will be presented by Deloitte Consulting at the WCA Council meeting on October 7, 2009.

## **2. Update on the Rehabilitation Reporting to Industrial Accidents by WC Carriers.**

**Mr. Bunkall** told the Council that following the passage of HB39, a required report on rehabilitation efforts must be sent to the Commission on a quarterly basis using Form 239. A draft Form 239 was shown the council as well. The bill also required WC carriers to send a copy of the rehabilitation initial report to the Commission on Form 206. This form had not been required by the Commission since 2002 when budget cuts were made and the Commission no longer employed a rehabilitation counselor. At that time, it was determined there would be no practical use for the forms to be filed with the Commission. Now, HB39 again requires the reports be filed with the first report due by November 15, 2009, for the first reporting quarter of July 1 – September 30, 2009. This will require the new Form 239 to be adopted formally through the rulemaking process.

**Mr. Bunkall** said there was no longer any practical use for the information required by the form and would put an additional burden upon his staff. After some discussion among the Council members, the consensus was that the information reported on the form could be useful to gather for historical purposes in helping the legislature and other interested parties determine if mandatory rehabilitation was being done. This data will be helpful to collect. **Mr. Bunkall** said it would be necessary to adopt Form 239. As there was not a quorum present and no formal motion could be made, it was generally agreed that the Council and other interested parties would review the form and pass along any suggested changes to the Commission. **Mr. Bunkall** will notify Council members of any suggested changes via email and also send a final draft of the proposed form before proceeding through the rulemaking process.

## **3. IAD working on a new rule for non-reporting of F122 (First Report of Injury)**

**Mr. Bunkall** said the Commission is working on a new rule to designate the penalty process for non-reporting of the First Report of Injury through Form 122. He said the final rule would be implemented shortly and would be distributed to Council members for their consideration before the next Council meeting in October.

## **4. Review of Workers' Compensation Premium Surcharge Funds**

**Mr. Lamb** distributed a handout showing the different WC insurance premium funds administered by the Labor Commission. The Employers' Reinsurance Fund (ERF); Uninsured Employers' Fund (UEF); Workplace Safety Account (WPSA) and Industrial Accidents Restricted Account (IARA) were all reviewed and discussion was held regarding the current balances and expenditures of each fund.

## **5. WC Legislation for the 2010 Legislative General Session**

**Commissioner Hayashi** said the Utah Supreme Court is scheduled to hear the Merrill case which involves how to apply the Social Security offset in workers' compensation disability cases, and whether the offset should be retroactive. The case should be heard in September. Following the Court's decision, the Commission will have the necessary information to determine what steps will be required to comply with the final decision.

## **6. Update on Advisory Council Committee Report on WC Insurance Premium Tax**

**Commissioner Hayashi** told the Council that the Commission had received a letter from the Business and Labor Interim Subcommittee asking for a report on the workers' compensation insurance premium tax. **Mr. Bunkall** reported that the committee assigned to review this issue will present their recommendations on the two questions required through SB15, which are: (1) Should the premium assessment be changed; and (2) should there be changes to how the premium assessment should be used. **Mr. Bunkall** said he has prepared a draft document for the committee to review and they will then take a position in order to prepare this report. He said the committee plans to get together within the next two weeks and have the report sent to the Business and Labor Interim Committee for their September 16, 2009 meeting.

## **7. Other Business**

**Mr. Bunkall** reported that an Open Meeting had been held at the Commission on August 12<sup>th</sup> and it was suggested that the Medical Fee Guidelines become effective January 1, 2010, rather than the earlier agreed upon date of December 1, 2009. This would coincide with the calendar year for ease of calculations. He said the issue was also discussed at the last WCA Council Meeting and the December date was agreed upon then. However, since that meeting, the IA staff has discussed the issue with medical providers, carriers, and others, and feels for logical purposes the January 1 adoption would be a better choice. **Maggie Karpuk** said NCCI could incorporate either December 1, 2009 or January 1, 2010 into their rate filing calculations. The effective date of December 1, 2009 for the new 2009-2010 Medical Fee Guidelines would result in no lag time. The effective date January 1, 2009 would result in an 11-month lag time in NCCI rate filings reflecting the new medical increased cost. Either way, NCCI completion of their rate filing calculations are possible if the Commission makes those intentions known. Richard Thorne said the December 1, 2009 seems to be the best date because NCCI and WC insurance carriers will avoid the 11 month lag time. David R. Bird commented that avoiding the 11 month lag time would be best. Commissioner Hayashi said the Commission will stick with the December 1, 2009 effective date rather than January 1, 2010 effective date if NCCI information confirms the later effective date results in the 11 month lag time. **Ms. Karpuk** will work with **Mr. Bunkall** to solidify the information.

**Commissioner Hayashi** reminded Council members the next meeting will be held on October 7, 2009, and will begin at 11:45 a.m. She adjourned the meeting at 1:00 p.m.

The meeting adjourned at 1:00.